

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 12-88

VOCATIONAL TECHNICAL
EDUCATORS OF MONTANA, MFT,
AFT, AFL-CIO,

Complainant,

vs.

MONTANA EDUCATION ASSOCIATION,
MEA, HELENA SCHOOL DISTRICT
NO. 1, AND MISSOULA COUNTY
HIGH SCHOOL,

Defendants.

FINDINGS OF FACT;
CONCLUSIONS OF LAW;
RECOMMENDED ORDER

* * * * *

I. BACKGROUND

On June 21, 1988, the Complainant, Vocational-Technical Educators of Montana, MFT, AFT, AFL-CIO, filed an Unfair Labor Practice Charge with the Board of Personnel Appeals alleging that Defendant, Montana Education Association, NEA, violated Section 39-31-401(1) MCA by causing Defendant School Districts to unlawfully withhold membership dues from the pay of employees who had effectively resigned from the Montana Education Association, NEA. The Complainant further alleged that Defendants Helena School District No. 1 and Missoula County High Schools violated Section 39-31-401(1), (2), and (3) by withholding membership dues from employees' pay despite notification from those employees of their

1 resignation from the Montana Education Association, NEA.

2 The Board of Personnel Appeals conducted an
3 investigation in this matter and issued an Investigation
4 Report and Determination on August 5, 1988. That report
5 found the charge to be without probable merit and
6 recommended the complaint be dismissed. The Complainants
7 filed timely exceptions with the Board of Personnel Appeals
8 and on October 13, 1988 the Board of Personnel Appeals
9 remanded the case for a hearing on its merits.

10 Subsequently Arlyn L. Plowman was appointed Hearing
11 Examiner and the matter was noticed for hearing.

12 Pursuant to a Notice of Hearing dated November 10,
13 1988, a Pre-Hearing Conference was held on December 7, 1988
14 in the first floor conference room of the Montana Department
15 of Labor and Industry building in Helena. Present at that
16 Pre-Hearing Conference were Matt Thiel representing the
17 Complainant and Emilie Loring, Counsel for the Defendant
18 Montana Education Association (MEA). Neither of the other
19 Defendants, Helena School District No. 1 nor Missoula County
20 High Schools made an appearance. During the course of the
21 Pre-Hearing Conference the parties entered into a
22 stipulation of facts, waiver of hearing and briefing
23 schedule which is reconstructed below.

24 STIPULATION OF FACTS, WAIVER OF HEARING AND
25 BRIEFING SCHEDULE

1 precedents as guidelines to interpreting the Montana
2 Collective Bargaining for Public Employees Act as the
3 state act is so similar to the National Labor
4 Management Relations Act, State ex rel. Board of
5 Personnel Appeals vs. District Court, 183 Montana 223,
6 1979, 598 P.2d 1117, 103 LRRM 2297; Teamsters Local
7 No.45 vs. State ex rel. Board of Personnel Appeals, 195
8 Montana 272, 1981, 635 P.2d 1310, 110 LRRM 2012; City
9 of Great Falls vs. Young (Young III), 686 P.2d 185,
10 1984, 119 LRRM 2682.

11 3. Pursuant to Section 39-31-401 MCA, it is an
12 Unfair Labor Practice for a public employer to: (1)
13 interfere with, restrain or coerce employees in the
14 exercise of the rights guaranteed in Section 39-31-201
15 MCA; (2) discriminate in regard to hire or tenure of
16 employment in order to encourage or discourage
17 membership in any labor organization.

18 4. Pursuant to Section 39-31-402 MCA, it is an
19 Unfair Labor Practice for a labor organization or its
20 agents to restrain or coerce employees in the exercise
21 of the rights guaranteed in Section 39-31-201 MCA.

22 5. Pursuant to Section 39-31-406 MCA, the
23 complainant's case must be established by preponderance
24 of the evidence before an Unfair Labor Practice may be
25 found, Board of Trustees vs. the State of Montana, 103

1 The principle parties, Vocational-Technical Educators
2 of Montana (VTEM), MFT, AFT, AFL-CIO and the Montana
Education Association (MEA) through their respective
3 representatives, agree as follows:

4 STIPULATED FACTS

5 I

6 Twelve employees at the Helena and Missoula Vo-Techs
7 attempted to withdraw their membership from the MEA and
8 to revoke their voluntary authorization for dues
9 deduction during the 1987-88 school year outside the
MEA's window period. The MEA refused to grant their
request to revoke membership and voluntary dues
deduction authorizations. The school districts
continued to deduct dues from the employee pay checks
per the MEA's request.

10 II

11 The collective bargaining agreements covering the
12 Helena and Missoula Vo-Tech employees did not require
13 the payment of agency shop fees as a condition of
employment at the time the employees attempted to
revoke their membership.

14 III

15 All employees had signed individual MEA membership
forms voluntarily authorizing the deduction of dues
for the payment of this membership.

16 IV

17 The MEA continued to receive dues through check-off
18 from the employees who had attempted to cancel their
19 memberships through the end of the 1987-88 school
year. The earlier attempted withdrawals were all
honored by the MEA during the purported "window
period", starting August 1, 1988.

20 V

21 On June 21, 1988 the VTEM, MFT, AFT, AFL-CIO filed
22 unfair labor practice charges against the MEA and the
23 school districts stating that Sections 39-31-
401(1),(2), and (3) and 39-31-402(1), MCA were
24 violated by the continuing deduction of membership dues
from paychecks of employees who had revoked their
membership.

25 VI

The two defendant school districts, Helena and
Missoula have chosen not to participate and have

1 indicated to BPA (Board of Personnel Appeals) agents
2 that they will abide by the decision of the agency in
3 this matter.

4 STIPULATED LEGAL ISSUE

5 Whether the MEA may restrict members' resignation
6 attempts and continue to collect dues, under its
7 continuing membership plan, from employees who
8 attempted to resign outside the "window period"
9 without violating Section 39-31-402(1) MCA.

10 WAIVER OF HEARING

11 The parties waive a factual hearing on this matter and
12 will submit briefs addressing the legal issue.

13 BRIEFING SCHEDULE

14 Charging party will file its initial brief on/before
15 February 1, 1989. Defendant MEA will file its reply
16 brief on/before March 1, 1989. If charging party
17 wishes to file a reply brief it will be filed on/before
18 March 20, 1989. The matter will be deemed submitted
19 upon the filing of charging party's reply brief.

20 II. SUBMISSIONS

21 The Complainant filed an initial brief and the
22 Defendant filed a reply brief, both of which were
23 timely. The Complainant did not file a reply brief.
24 The matter was deemed submitted on March 20, 1989.

25 III. CONCLUSIONS OF LAW

1 The Board of Personnel Appeals has
2 jurisdiction in this matter pursuant to Section 39-31-
3 405 et seq., MCA.

4 The Montana Supreme Court has approved the
5 practice of the Board of Personnel Appeals in using
6 Federal Court and National Labor Relations Board (NLRB)

1 LRRM 3090, 604 F.2d 770, 1979; See also Indiana Metal
2 Products vs. NLRB, 31 LRRM 2490, 202 F.2d 613, CA 7
3 1953; and NLRB vs. Kaiser Aluminum and Chemical
4 Corporation, 34 LRRM 2412, 217 F.2d 366, CA 9 1954.

5 6. Pursuant to Section 39-31-203 MCA, a public
6 employer, upon written authorization of any public
7 employee within a bargaining unit, shall deduct from
8 the pay of that public employee the monthly amount of
9 the dues as certified by the secretary of the exclusive
10 representative and shall deliver those dues to the
11 Treasurer of the exclusive representative.

12 7. The Complainant refers to National Labor
13 Relations Board and Federal Court precedents in several
14 cases including Pattern Makers League vs. NLRB, 473 US
15 95, 119 LRRM 2928, 1985, and argues that any
16 restriction on an employee's right to rescind dues
17 deduction authorization is unlawful restraint or
18 coercion and an Unfair Labor Practice pursuant to
19 Section 39-31-402 MCA. As instructive as Pattern
20 Makers, supra, may be, it is not controlling in this
21 matter. Pattern Makers, supra, and other precedents
22 cited by the Complainants hold that a union cannot use
23 monetary fines to burden a member's right to resign in
24 an attempt to avoid union discipline. The facts in
25 this matter are substantially different from those

1 surrounding Pattern Makers, supra. See Auto Workers
2 Local 449 vs. NLRB, CA 6; January 19, 1989; 130 LRRM
3 2388; 283 NLRB 30.

4 8. The Board of Personnel Appeals has examined
5 the dues deduction authorization form used by the
6 Defendant Montana Education Association which contains
7 a limited window period. The Board has found that form
8 to be consistent with state law in that an employee may
9 voluntarily submit to a dues deduction that is not
10 revocable at will. See ULP #2-79, Kalispell Federation
11 of Teachers vs. Kalispell Education Association,
12 December 11, 1979 and ULP #29-84, Sidney Education
13 Association v. Richland County High School District No.
14 1, August 30, 1985.

15 9. The Complainants' attempted revocation of
16 their dues deduction authorization outside the window
17 period is ineffective. Refusal to comply with an
18 attempted dues deduction revocation outside the window
19 period is neither coercive nor a restraint on the
20 employees Section 39-31-201 MCA rights to engage in, or
21 refrain from, protected concerted activities. See
22 Electrical Workers (UE) Local 123 vs. Westinghouse
23 Electric Corporation, 345 F Supp. 274, 80 LRRM 3151,
24 affirmed, 478 F.2d 1399, 83 LRRM 2409, CA 3 1973; US
25 Postal Service vs. NLRB, CA 9 1987, 126 LRRM 2277, 827

1 F.2d 548; US Postal Service vs. NLRB, CA 6 1987, 126
2 LRRM 1137, 833 F.2d 1195.

3 IV. RECOMMENDED ORDER

4 It is hereby ordered that the Unfair Labor
5 Practice complaint of the Vocational Technical
6 Educators of Montana, MET, AFT, AFL-CIO filed with the
7 Board of Personnel Appeals on June 21, 1988 be
8 dismissed.

9 V. SPECIAL NOTICE


10 Exceptions to these Conclusions of Law and
11 Recommended Order may be filed within twenty (20) days
12 of service thereof. If no exceptions are filed, this
13 Recommended Order shall become the final Order of the
14 Board of Personnel Appeals. Address exceptions to the
15 Board of Personnel Appeals, P.O. Box 1728, Helena, MT
16 59624-1728.

17 Dated this 7th day of April 1989.

18 BOARD OF PERSONNEL APPEALS

19 By: 
20 Arlyn L. Prowman
21 Hearing Examiner

22 CERTIFICATE OF MAILING

23 I, , do
24 hereby certify that a true and correct copy of this
25 document was mailed to the following on
the 7th day of April 1989.